

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 76-191

In the
Supreme Court of the United States

OCTOBER TERM, 1976

SIMON ANSCHUL, Individually and on behalf of all
persons similarly situated,

Petitioner,

vs.

SITMAR CRUISES, INC.,

Respondent.

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF
to the United States Court of Appeals
for the Seventh Circuit

ARGUMENT

I.

**ALL ISSUES ARGUED IN THE PETITION FOR CER-
TIORARI WERE RAISED BELOW**

Respondent has raised a specter that Plaintiff below made no argument related to the "death knell" theory. Respondent conveniently completely ignores both Plaintiff's original brief before the Court of Appeals wherein

Plaintiff discussed the divergence of opinion between the various jurisdictions relating to the "death knell" theory and Plaintiff's response to Respondent's original Motion to Dismiss the appeal. Inasmuch as Respondent seeks to create this additional ground, Petitioner has requested the Clerk of the Court of Appeals to forward the Briefs and Motions to this Court for the consideration of this Court in their review of the Petition.

Furthermore, the question of appealability under 28 USC 1291 was clearly briefed and argued on all theories in the oral argument before the Court of Appeals and was clearly preserved for consideration by this Court.¹

II.

THE PETITION FOR CERTIORARI CLEARLY SETS FORTH THE REQUIRED ELEMENTS AND CONSIDERATIONS FOR REVIEW

It would serve no purpose to reargue all the fully briefed arguments which have already been presented. Suffice it to say that Respondent's own argument in its response to the Petition for Certiorari unwittingly acknowledges that the case involves a claim of right clearly

¹ The 9th Circuit has redefined its position in *Share v. Air Properties*, F2d; 45 LW 2044 (9th Cir. 1976)

separable from, and collateral to, rights asserted in the action.

Respectfully submitted,

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